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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,251	03/08/2001	Andrew Paul Maxwell Salmon	1171/39247/91	5561

7590 07/09/2003
Trexler, Bushnell, Giangiorgi,
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105 West Adams Street, Suite 3600
Chicago, IL 60603

EXAMINER

FOX, JOHN C

ART UNIT	PAPER NUMBER
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3753

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DATE MAILED: 07/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/802251

Applicant(s)

Examiner

/vx

Group Art Unit

3753

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/21/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-13, 20-25 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10, 12/10, 20-25 is/are rejected.
- ☒ Claim(s) 11, 12/11 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 15
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Serial Number: 09/802251

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This action is responsive to the communication filed May 21, 2003.

The indicated allowability of claims 4-5 and 8-12 is withdrawn upon reconsideration of Barsky. The error is regretted.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 20-25 are rejected under 35 U.S.C. § 103 as being unpatentable over Barsky '896 (US 5,649,896) in view of Moll et al '003 (US 5,817,003). Barsky '896 teach an incubator with electrothermal covers 68, 69, sides 24, 26, 28, 30, and element 77 which goes under mattress 76, all of which are controlled to provide radiant heat to the infant when the overhead radiant warmer is off, or in addition to the overhead warmer. Barsky '896 also provide humidity and control of that. Barsky '896 teaches controlling the heaters in response to sensors but does not talk about the infants skin temperature. Moll et al '003 show an incubator including a radiant heater 56 and controller 200 for controlling the heater 56, among other things, so the skin temperature is maintained at a set point, see column 9, lines 12-16, for example 35° C, +/- 0.3° C. Moll et al use a temperature probe 202 attached to the baby. It would have been obvious for one of ordinary skill in the art to have used such a control system as taught by Moll et al in the incubator of Barsky '896 to

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desirably keep the infants skin temperature at the desired set point, or range.

Claims 1-10 and 12/10 are rejected under 35 U.S.C. § 103 as being unpatentable over Barsky '896 in view of Moll et al '003 as applied to claims 20-25 above, and further in view of Donnelly et al '002 (US 5,817,002). Donnelly et al '002 teach an incubator where all or parts of the cover can be a liquid crystal light shutter to allow selective darkening of the incubator, see column 5, lines 40-45. It would have been obvious for one of ordinary skill in the art to have provided such liquid crystal light shutters in the covers 68, 69 of Barsky '896, as modified, to similarly allow for the selective darkening of the Barsky '896 incubator. As to claim 4, it is considered an obvious matter of design choice to make the frames of the covers from extruded aluminum, for example, which would be opaque. As to claim 12, Barsky '896 teaches thermal sensor 80 at the top of the mattress. It would be obvious to use this as the skin sensor.

Claims 11 and 12/11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Prior Art made of record and not relied upon is considered pertinent to applicant's disclosure. Koch teaches a control for heating an incubator.

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Any inquiry concerning this communication should be directed to Examiner Fox at (703) 308-2595 or John.Fox@uspto.gov. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861. The fax number for TC 3700 is 703-872-9302. For responses after final the fax number is 703-872-9303. The Supervisory Primary Examiner for Art Unit 3753 is Mikado Buiz who can be reached at (703) 308-2580 or at Michael.Buiz@uspto.gov.



JOHN FOX
PRIMARY EXAMINER
ART UNIT 3753

jcf
July 4, 2003